

Your Rights Under WA Equal Pay and Opportunities Act

LUZ GONZALEZ-VIRGEN: First, we would like to go over

a virtual housekeeping to provide you a quick overview of Zoom.

We realize that you have been using Zoom as much as we have.

With just for purposes of this presentation,

we would like you to remain muted to eliminate

background noise and having multiple people talking at the same time.

Please leave your video off to avoid any connectivity issues.

Also please open your participants window

and I see that you are all providing us with your name

which is always helpful for us to call your name if we get any questions.

Lastly, if you could please open the chat window so that you can read comments and

questions from others and also so you'll

have an opportunity to ask questions during the presentation.

We can go to the next slide. Thank you.

My name is Luz Gonzalez-Virgen and I am

the Equal Pay specialists with the Department of Labor and Industries.

I enforce the Equal Pay and Opportunities Act and I also investigate complaints filed against employers regarding protections under the Equal Pay and Opportunities Act.

In the next hour,

I will be sharing an overview of the law and I will also go over

your rights as an employee and job applicants in Washington State.

I will also talk about

our investigation process in the event that you need to file a complaint in the future.

Lastly, at the end of the presentation,

we're going to have a list of resources for you.

L&I has a lot of different programs,

and my program also investigates cases related to wage and hour and workplace rights.

I want to make myself available for you if you have any questions regarding your employment in the future.

If I don't have the answer,

I will refer you to the appropriate program or agency.

Thank you, Andrea and the Global Connections Program at WSU for allowing us the time to connect with your students today and inform them about their rights.

Also from Illinois, I have my coworker, Bob Joy,

who's going to manage the PowerPoint presentation behind the scenes.

I encourage your participation and welcome any questions during the presentation.

Before we get started,

I do want to get a feel for the audience.

If you could, please let me know if you are currently employed in Washington.

You can use the chat window here.

Great. If you are employed or if you're planning to work in Washington, this information will apply to you.

L&I has the authority to enforce the Equal Pay and Opportunities Act which is a fairly new law that took effect on June 7th of 2018.

This law updated their Washington Equal Pay Act of 1943.

The legislature's intent was to address income disparities, employer discrimination, and retaliation practices, and to reflect

the equal status of all workers in Washington State.

All employers doing business in Washington are required to comply with the Equal Pay and Opportunities Act,

including private and public employers.

All employees working in Washington are protected by this law.

All job applicants seeking employment

with a Washington employer are protected by the law.

This law promotes gender pay equity through equal pay,

equal career advancement opportunities,

open wage discussions, prohibited retaliation against employees.

As of July 28th of 2019,

the legislature took additional steps towards gender equality

and added more protections for employees and job applicants to this law.

We can go to the previous slide,

Bob. Thank you so much.

This table shows the rights that employees and job applicants have under this law.

As you can see here,

employees have the right to equal pay not based on gender,

equal career advancement opportunities,

not based on gender,

ability to discuss wages, protection from retaliation.

They should also have access to wage or salary information

of a new position or promotion after the requesting information.

Now, that last requirement only applies to employers with more than 15 employees.

Now, what's new about this law is that job applicants also have rights.

They have the right to privacy of wage or salary history when applying for a job,

so an employer cannot request or seek to know how much they made before.

There cannot be a requirement for a wage or salary history to meet certain criteria.

They should also have access to minimum wage or salary information of a new position.

As an employee, you can file a complaint with our department of your employer provided you with unequal compensation compared to other employees who are similarly employed to you based on gender. You can also file a complaint if your employer provided you with limited or denied you from career advancement opportunities because of your gender.

You could also file a complaint to the employer prohibited you from having wage discussions or retaliated or took an adverse action against you for exercising any of the protected rights under the law.

Now, lastly, you could also as an employee, file a complaint if your employer failed to provide you with the wage or salary information for a new position after you were offered the internal transfer or promotion and requested the information.

Now, if you are going to be seeking employment in the future, as a job applicant you also have rights.

You have the right again, to have privacy of your previous wage and salary history.

You can file a complaint if an employer is asking for that information.

You could also file a complaint if the employer required your wage or salary history to meet certain criteria, such as requiring a minimum past salary for you to be considered for the position.

Lastly, you can file a complaint if the employer didn't provide you with the wage or salary information of the new position after you requested the information.

We'll go over each of the protections in more detail.

Again, I welcome your questions.

This way, we can make this presentation more interesting.

We'll go over again one and each of the protections.

The first one is Equal Pay.

Employers may not discriminate by providing

different compensation based on gender between similarly employed employees.

Employees are similarly employed if they work for

the same employer and the performance of their job requires similar skill,

effort, responsibility, and working conditions.

Now, working conditions include factors such as

the physical surroundings and hazards encountered by employees performing the job.

A difference in time of a shift,

this work is not likely to be considered different working conditions.

Job titles alone do not determine if employees are similarly employed.

When determining whether employees are subject to gender pay discrimination,

we will consider all compensation given to similarly employed employees.

Compensation includes wages and benefits provided by an employer to an employee.

Wages include but are not limited to salaries,

hourly rates, commissions, and non-discretionary bonuses.

Benefits include compensation given to employees not based on performance such as gifts,

medical insurance plans, retirement plans,

paid time off, and discretionary bonuses.

Employees who are similarly employed could be

compensated differently as long as the difference is based

entirely on permissible bonafide job-related factors

that are consistent with business need,

are not based on gender,

and account for the entire compensation difference.

According to the law,

permissible job-related factors include but are not limited to: education, training, experience, and seniority system,

a merit system, a system that measures earnings by quality or quantity of production.

Then also regional differences in compensation levels and

compensation based in good faith on a local minimum wage ordinance,

different from the state law.

What does this mean?

Let's say that you're working for an employer and you notice

that you are getting paid less than other employees.

After you realize that you are getting paid less

and you believe that the reason may be because of your gender,

you can ask the employer if they have a justifiable reason for the pay difference.

Now, if the employer says or claims that it is

one of the bonafide factors that we have here, for instance,

a seniority system, hopefully they have it in

their policy that that is how they determine compensation.

But if you believe or you suspect that the reason

why the employer is paying you differently is because of your gender,

you can file a complaint with the department and we will investigate it.

You have any questions so far?

We'll continue here.

Unacceptable differences.

So gender can not be a reason for pay differences between employees with similar jobs and

employees previous wage or salary history is
not an acceptable defense for compensation differences,
and pay negotiation at time of hiring is not
an acceptable defense for gender pay differences.

So employers can negotiate pay during the hiring process,
but if the pay offered to an employee causes
gender pay difference between similarly employed employees,
any difference in compensation must be justified
by one of the job-related factors that are permissible by the law.

So next, we'll talk about career advancement opportunities.

An employer may not limit or deprive you of
career advancement opportunities that would otherwise be available based on your gender.

So career advancement opportunities are determined on a case-by-case basis,
but this could include promotion opportunities or job-related training.

Differences in career advancement opportunities can only
be based on bona fide factors and those could be acceptable.

Similarly to equal pay,
the job-related factors include but are not limited to education, training or experience,
seniority system, a merit system,
or based on performance and measuring earnings by quantity or quality of production.

Now we'll talk about open wage discussions.

Employees may not be prohibited from discussing,
comparing or disclosing their wages as a condition of employment.

Employers may not require you to sign any waivers,
agreements or other documents that would prevent you from disclosing your wages.

Just double-check if we can go to the next slide. Thank you Bob.

So employers can prohibit such disclosures

if an employee has access to compensation information

of other employees and applicants as part of that employee's essential job function,

such as human resources manager or payroll person.

This employees maintain the right to discuss

their own wages and are also protected from retaliation.

Employers must provide an employee who is offered any internal transfer or

promotion with a wage scale or salary range of a new position,

upon request by the employee.

If a wage scale or salary range does not exist,

the employer must provide the minimum pay rate or

salary range set by the employer prior to posting the position,

making a position transfer,

or offering a promotion.

Now, again, this requirement only applies to employers with 15 or more employees.

So employees are protected from retaliation,

if they are exercising any of their protected rights under this law.

Additionally, an employer may not retaliate,

discharge, or discriminate against an employee,

because the employee was asking the employer to provide

a reason for their wages or lack of opportunity for advancement,

or if the employee was inquiring, disclosing,

comparing or discussing their wages or the wages of other employees.

Aiding or encouraging another employee to exercise

their rights under the law or if an employee files a complaint.

Do we have any questions so far?

Give me a minute here in case you're typing your questions.

I know it's getting late,

but do let me know if you have any questions.

Okay, well, now let's go over job applicant protections.

So again, job applicants have the right to wage and salary history privacy.

Employers cannot seek the wage or salary history of an applicant.

An employer may confirm an applicant salary after the employer negotiates and makes a job offer, including pay to the applicant.

Now, job applications can not ask for any applicants previous salary even if that section is optional.

Employees can voluntarily disclose their wage or salary history to perspective employers.

So let's see, we have a question here.

So the only way to know if there's a difference in salary is to have others disclose their salary to you personally.

Are you referring doing an investigation or when prior to you determining whether you are going to file a complaint prior to filing?

So this is why it's important for employees to know that they should be able to have wage discussions, so yes.

The only way that you may have knowledge that other employees are getting paid more than you is if you talk about it.

Now, if ideally an employer would have policies or an employee handbook that would maybe set the range for compensation or would be transparent and inform employees how they are going to get pay increases, so that would be ideal, right?

But if that's not the case,

because employers are not required to have such policies,

you should know that you have the right to discuss your wages.

So the only way that an employer can make it confidential is they can only

prohibit employees whose job duties entail maintaining those records,

such as an HR person or payroll.

They cannot prohibit employees from having wage discussions.

You're welcome. Let's continue talking about job application protections.

Employers cannot require that an applicant's prior wage or salary

history meets certain criteria in order to be considered for the position.

Lastly here, similarity to employees,

job applicants have the right to have access to

minimal pay rate or salary range information.

So employers must provide an applicant who is offered a position with

a minimum pay rate or salary range of the position

they are applying for if requested by the applicant.

Well, next we're going to talk about our investigation process.

If an employee or applicant files a complaint,

L&I is required to investigate it.

Now, employees also have the option to file a civil action,

but L&I cannot investigate the complaint if an employee has filed a civil claim.

During an investigation, L&I may request documentation and witness testimonies.

Now, although the employer carries the burden of proof when it comes to equal pay issues,

it is important for you to know that you should also maintain records yourself as

an employee just in case we don't get

any response from the employer during an investigation.

Do you have any questions about that?

Good question May.

What kind of record should be kept?

When I talk about records,

you as an employee,

maybe you can save any correspondence and emails,

text messages that you have exchanged when it comes

to any of their protections under the law.

For instance, if you are being told that you cannot talk about

your pay and maybe they sent you an email or text message,

I would say save that just in case you are considering to file a complaint in the future.

You were asking why can't we investigate if a civil suit is filed?

The law states that we can have

an ongoing investigation as well as a civil claim at the same time.

However, employees do have the option to file complaints

with different agencies for similar issues at the same time.

I have seen cases where employees have filed complaints with

the Human Rights Commission and the Equal Pay and Opportunities Commission,

as well as L&I at the same time.

That's allowed, it's just that the law states that we can not have

an ongoing investigation as well as civil claim at the same time.

Great questions.

We'll go to the next slide.

If violations are not found during an investigation L&I will

send a notice of finding to

the employee and the employer and then will close the investigation.

However, if we do find violations,

L&I is required to attempt to resolve the case through, conference and conciliation.

The goals would be to resolve complaints

without L&I issuing a citation and notice of assessment,

and to reach to a resolution that is

acceptable to the employee or the job applicant, and the employer.

Some possible resolutions may include paying back wages owed,

providing career advancement opportunities,

changing company policies or making revisions to company policies,

job reinstatement, and other proposed resolutions.

If we are not able to resolve the issue through conference and conciliation,

L&I may issue a citation and notice of assessment and

order the employer to pay actual damages for lost wages.

For example, statutory damages equal to

the actual damages or 5,000 dollars whichever's greater,

interest of 1 percent on compensation owed,

investigation and enforcement costs,

and a civil penalty of 500 for the first time violation,

or a 1,000 or 10 percent of damages,

whichever is greater, for repeat violations.

We do end up issuing a citation,

a notice of assessment,

the employer does have the right to appeal a notice of

assessment if they disagree with the findings.

As an employee, you may file a civil action against

the employer within three years of the date of the alleged violation.

Just a reminder, if an employee files a civil claim in court,

L&I cannot investigate the complaint filed with the department.

I have a question here.

Would you say most cases are able to be solved through conference and conciliation?

Yes. Most of the cases that I have

where I found violations have been resolved through conference and conciliation.

But again, the goal is that we will reach to a resolution that is acceptable

to all parties involved, including the employee.

Do we have any other questions? You're welcome.

Next we have a list of resources here for you.

We have the link to the RCW.

We also have a lot of information on our website.

We have created a list of frequently asked questions.

We'll have Bob take us to our website here.

You can go to our website, which is lni.wa.gov.

Then you see where it says workers rights.

Then you click where it says "Wages",

and then Equal Pay and Opportunities Act.

Here you'll have an overview of what we just covered.

But then on the left side here,

if you can take us to the frequently asked questions,

we have created a list of questions and answers based on the investigations that we

have resolved considering the issues that were presented.

You're welcome to visit our website and review the questions and answers.

Thank you, fam. We also

have created other resources.

For instance, we have created an employee rights poster for employees to be informed about their rights, employees and job applicants.

Then we are also providing you with a link to our complaint forum in case you need to file a complaint in the future.

If you have provided your email to Andrea,

I'm happy to provide her with

the presentation so that you have access to this information as well as the links.

Next, we are providing you with the links to other state agencies

just in case you have any other questions

in relation to their protections that they enforce.

You can see here we have the Human Rights Commission.

As you know, the Employment Security department

enforces the Paid Family and Medical Leave.

The Equal Employment Opportunity Commission,

and the US Department of Labor.

Well, do you have any other questions for me or if

you have any examples that you want to share, any scenarios.

I have a question here from Nate,

how important would you say this information is to college students?

One of my goals is to inform employees and

job applicants about their rights in addition to informing employers,

but most importantly employees because we are not seeing a lot of complaints coming in.

We sense that the public is not well aware about the Equal Pay and Opportunities Act.

I was actually a WSU student and I graduated a few years

ago so I understand that you may not be employed right now,

but you may be in the future and this information will apply to you.

I have another another question here from Andrea.

Have you seen cases of retaliation after the case was resolved?

I haven't seen cases of retaliation after we resolved the complaint.

What I have seen is that there was an adverse action once the employee asked the employe,
r or once the employer realized that the employee was aware of his or her rights.

I'm normally investigating the retaliation issue at
the same time that I am investigating the other allegations.

We have another question.

Very good question.

What does retaliation look like usually?

It could be any adverse action against
the employee from the employer
because the employee was exercising any of their rights under the law.

This could entail, let's see what have been some of the cases that I have seen,
maybe the employee was let go or fired because they
asked for a reason as to why they were getting paid differently,
or why they were being denied career advancement opportunities.

This could be any adverse action that the employee experienced as
a result of exercising any of the protections under the law.

Very good questions.

Andrea, good question.

Have you seen cases with too little evidence?

Yes. We do often see cases where we
don't have enough information to determine that there was a violation,
and for that we are asking the employees to

provide whatever information or contact information to other employees that we can interview.

Yeah. Another question here is,

all of these protections include any protected status, including race and sexual orientation?

No, this law, the Equal Pay and Opportunities Act only applies to gender.

But again, there are other agencies that enforce other protected classes.

Another question here is how often do salary difference-based cases occur?

I would say quite often.

These are actually complex cases.

I get complains from male and female employees from different industries.

Not just the lower paid industries,

I have seen cases where you have higher paid employees filing complaints.

Very good questions.

Do you have any other questions?

Another question here.

How long can a single case tend to last?

I am given 90 days to complete an investigation.

But if this is a complex investigation it may take longer.

Andrea. Her question is,

usually with equal pay you'd think of cases with women, what is an example of one where a man files a complaint?

Again, this doesn't apply just to women.

This is based on gender.

When it comes to equal pay and career advancement opportunities, both female and male employees,

or any other gender could file a complaint.

The intent of the law as I stated previously,

the legislators, their main intent was to

reduce the gap because women were getting paid less.

But the law protects all genders.

I cannot think of a specific example right now. You're welcome.

Another question from Ned,

is there a common age range in

complainants or complaints or is it pretty well spread out?

Now, are you talking about age of the person filing the complaint?

Yeah, I don't normally ask for that information,

so I would not know.

But there are cases where there may be

older protected classes that are alleged to be violated.

For instance, I can be investigating a gender related issue,

but the other may have been other types of discrimination,

for instance, race discrimination.

I'm sorry, racial discrimination or because of disabilities.

In those cases, again,

we have seen that the employee may file or may

have multiple investigations with different agencies at the same time.

Another question here is,

are there any warning signs to look out for in the workplace as an employee?

I would say any warning signs may be that, for instance,

if you are not provided with

an employment policy or if you have questions that are not answered.

Because you should be able to ask the employer if you have any questions.

Ideally, it would be all in writing,

but that's not normally the case.

Another question here, do you have an example of a case where a woman was denied advancement opportunities and filed a complaint?

I'm trying to think.

I can think of an example that would be mostly related to not being promoted to another position and the position was given to a male employee.

Those are the types of cases that we see where you have two employees who believe that they are equally capable but the job was given to someone else.

Again, the employee doesn't have to have the evidence, but if they suspect that the reason was based on gender, then they can file a complaint and we can request the records and investigate the complaint.

Another question here, if an employee works remotely are they protected by state laws in their home state or the company headquartered location?

In those cases, we do need to consider that the employee is Washington-based.

If they are working for a Washington employer and even if they're working from home, but if they're working in Washington then they would be subject to the Equal Pay and Opportunities Act.

There may be a series of questions that we will need to ask to determine that they are Washington-based employee.

I see what you're asking.

You're saying, "What I mean is the company is in Idaho while I live in Washington."

Aaron, do you work from your home?

You work in Washington?

Yeah, so very possible.

In that case, we will consider you a Washington employee.

Great questions, you guys. I'm so excited.

Another question here is,

if a complaint is filed,

you mentioned the burden of proof is on the employer to

prove that equal opportunity was given to the employee,

and then it says,

is that understanding correctly?

The burden of proof is given to the employer when it comes to unequal paying issues.

Now, with any other issue,

we may shift the burden of proof between the employee and the employer.

I have seen cases where the employee will provide pictures of

the employer's policy or text messages,

emails, all of that information is

helpful and this oftentimes is provided by the employee.

Thank you so much for your time.